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असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खंड (iii)
PART II—Section 3—Sub-section (iii)

प्राधिकार से प्रकाशित
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नई दिल्ली, सोमवार, जुलाई 21, 1997/आषाढ़ 30, 1919
NEW DELHI, MONDAY, JULY 21, 1997/ASADHA 30, 1919

भारत निर्वाचन आयोग

अधिसूचना

नई दिल्ली, 17 जुलाई, 1997

आ. अ. 81 (अ).—निर्वाचन आयोग 1991 की निर्वाचन अर्जी सं. 9 में इन्दौर बैन्च स्थित मध्य प्रदेश उच्च न्यायालय के तारीख 31 मार्च, 1993 के निर्णय और आदेश के विरुद्ध दाखिल की गई 1993 की सिविल अपील सं. 200 में तारीख 3 मार्च, 1996 को दिए गए भारत के उच्चतम न्यायालय के निर्णय को लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 116 ग की उप धारा (2) के खण्ड (ख) के अनुसरण में इसके द्वारा प्रकाशित करता है।

[सं. 82/म.प्र.-लो.स./ (9/91)/93-II]

आदेश से,

एल.एच. फरूकी, सचिव

ELECTION COMMISSION OF INDIA

NOTIFICATION

New Delhi, the 17th July, 1997

O.N. 81(E).— In pursuance of Clause (b) of Sub-Section (2) of Section 116 C of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the Judgement dated the 3rd March, 1996 of the Supreme Court of India in Civil Appeal No. 200 of 1993 filed against the Judgement and Order dated 31st March, 1993 of the High Court of Madhya Pradesh at Indore Bench in Election Petition No. 9 of 1991.

[No. 82/MP-HP/(9/91)/93-II]

By order,

L.H. FARUQI, Secy

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 6359 OF 1994

Dr. (Smt.) Shipra etc. etc.

Appellant

Versus

Shanti Lal Khoiwal etc. etc.

Respondent

With

Civil Appeal NOs. 8080/94, 6635/95

And

CIVIL APPEAL NO. 200 OF 1993

Jhammak Lal

Appellant

Versus

Laxminarayan Pande & Ors.

Respondents

JUDGMENT

K. Ramaswamy, J.

Since the question involved is common to all the appeals, they are disposed of together.

The first appeal, viz., C.A. No. 6359 of 1994 arises from the judgment dated August 30, 1994 of a Division Bench of the Rajasthan High Court made in Election Petition No. 6 of 1994. The appellant's nomination from Constituency No. 1, Viz., Rajsamand, reserved for Scheduled Castes for 10th Legislative Assembly of the Rajasthan State was rejected on the ground that appellant does not belong to Scheduled Caste. The respondent's election, after poll, was challenged by the appellant on the ground that the respondent had committed corrupt practices. After service of the notice, the respondent raised preliminary objections contending, *inter alia* that copy of the notice together with the affidavit in support of the election petition, i.e., Annexures 5 and 6, served on him did not contain the verification by the notary; hence the election petition was not maintainable in accordance with Section 83 [1] (c) of the Representation of the People Act, 1951 [for short, the 'Act']. The objections found favour with the High Court which accordingly dismissed the Election petition by the impugned order dated August 30, 1994.

In C.A. No. 8080 of 1994, elections to the Assembly Constituency No. 152, viz., Sahada in the Rajasthan State were held on November 11, and respondent was declared elected on November 28, 1993. The appellant, after he lost the election, filed Election Petition No. 4 of 1994 challenging election of the respondent on the ground of corrupt practices alleged to have been committed by him. Similar to the case of Mrs. Shipra, copy of the affidavit filed in support of the election petition supplied to the respondent, did not contain the verification by the notary. When objection in that regard was raised by the respondent, the learned single Judge by judgment dated September 22, 1994 dismissed the election petition.

In C.A. No. 6635 of 1995, elections were held to the Assembly Constituency No. 160, viz., Raipur in Pali District for 10th Legislative Assembly of the Rajasthan State. The appellant had contested the elections against the respondent who was declared elected on November 28, 1993. The appellant, after he lost the election, filed Election Petition No. 9 of 1994 challenging the election of the respondent on the ground of corrupt practices imputed to have been committed by the respondent. Similar to earlier appeals, the copy of the affidavit supplied along with the election petition to the respondent admittedly did not contain verification by the notary. When objection to that regard was raised by the respondent, the learned single Judge by impugned judgment dated May 26, 1995 upheld the objection and dismissed the election petition.

In Civil Appeal No. 200 of 1993, the respondent was declared elected to the Lok Sabha from the Parliamentary Constituency of Mandasaur in Madhya Pradesh. The appellant, an elector, filed Election Petition No. 9 of 1991 challenging the election of the respondent imputing corrupt practices to have been committed by him. The copy of the Affidavit supplied to the respondent did not contain the verification by the notary or oath commissioner. When preliminary objection was raised by the respondent, the learned single Judge of the High Court of Madhya Pradesh upheld the same and dismissed the election petition.

Thus in all the appeals, the only question that arises for consideration is : whether the copy of the election petition accompanied by supporting affidavit served on the respective respondents along with Form 25 prescribed under Rule 94-A of the Conduct of Elections Rules, 1961 [for short, the 'Rules'] without attestation part duly verified by the District Magistrate/Notary/Oath Commissioner can be said to be "true and correct copy" of the election petition as envisaged in Section 81[3] of the Act? An election petition calling any election in question, presented under Section 81 [1] of the Act, shall contain a concise statement of the material facts on which the petitioner relies, set forth full particulars of any corrupt practice alleged therein, including "as full a statement as possible" of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and the election petitioner shall sign the petition and verify in the manner laid down in the Civil Procedure Code, 1908 for the verification of the pleadings. Subsection [3] of Section 81

envisages that "[E]very election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the election petition and every such copy shall be attested by the petitioner under his own signature to be 'true copy of the petition'. Indisputably, requisite number of copies of the election petition accompanied by the summons were attested by the appellant under her own signature to be true copy. The copy supplied to the respondent admittedly did not bear the attestation part. Rule 94-A of the Rules provides that the affidavit containing allegations of corrupt practices shall be in the prescribed form, viz; Form 25 which enjoins accompaniment of solemn affidavit to be duly sworn by the election petitioner duly verifying correctness of alleged corrupt practice mentioned in various paragraphs of the election petition and attestation by District Magistrate/Notary/Oath Commissioner. The copy supplied to the respondent admittedly did not contain such a verification by the Notary who had attested the original affidavit filed along with election petition certifying it to be a true copy.

The question, arises as to the meaning of the expression "true copy." In "Sarkar on Evidence" [14th Edition-1993] it is stated at page 2183 under "Appendix A" that "[A]n affidavit is a statement in writing on oath or affirmation before a person having authority to administer an oath or affirmation. The affidavit should be in statutory Form 25 prescribed under Rule 94-A. It should be supplied along with the election petition which contains allegations of corrupt practices as grounds for assailing the validity of the election of a returned candidate. In Black's Law Dictionary [6th Edition] "copy" is defined at page 336 to mean "[A] transcript, double imitation, or reproduction of an original writing, painting, instrument, or the like. Under best evidence rule, a copy may not be introduced until original is accounted for". At page 1508, the word "true" has been defined as "[C]onformable to fact; correct; exact; actual; genuine; honest. In one sense, that only is "true" copy which is conformable to the actual state of things. The expression "true copy" is defined to mean : [A] true copy does not mean an absolutely exact copy but means that the copy shall be so true that anybody can understand it". In Webster's Comprehensive Dictionary [International Edition] "true copy" is defined as "[A]n exact, verbatim transcript of any document, report, etc.; especially, one certified as correct by a qualified authority". In Stroud's Judicial Dictionary [5th Edition] [Vol.5] "true copy" is defined at page 2694 thus: "A 'true copy' does not mean an absolutely exact copy; but it means that the copy shall be so true that nobody can by any possibility misunderstand it ... The test whether the copy is a "true" one is whether any variation from the original is calculated to mislead an ordinary person".

It would thus be clear that a true copy is a transcript identical to or substitute to the original but not absolutely exact copy. But nobody can by any possibility, misunderstand it to be not a true copy. It is seen that the test, as stated earlier, is whether by any variation from the original is calculated to mislead an ordinary person. When a petitioner is enjoined to file an election petition accompanied by an affidavit duly sworn by the applicant duly verifying diverse allegations of corrupt practices imputed to the returned candidate and attested by the prescribed authority it would be obvious that the statute intended that it shall be performed in the same manner as prescribed in Form 25 read with Rule 94-A of the Rules. The attestation of the affidavit by the prescribed authority, therefore, is an integral part of the election petition. The question, therefore, is: whether copy of the affidavit supplied to the respondent without the attestation portion contained in it [though contained in the original affidavit] can be considered to be a "true copy"?

In *Mithilesh Kumar Pande v. Baidyanath Yadav & Ors.* [1984 [2] SCR 278], in a situation analogous to the present one, question had arisen: whether the copy of an election petition, though attested by the election petitioner under his own signature, when it contained mistakes of vital character, could be considered to be a true copy and whether the mandatory requirement of Section 83 [3] of the Act had been complied with? This Court, after considering the entire case law including those cited across the bar by the counsel for the appellant, had thus:

"On a careful consideration and scrutiny of the law on the subject, the following principles are well established:

[1] that where the copy of the election petition served on the returned candidate contains only clerical or typographical mistakes which are of no consequence, the petition cannot be dismissed straightaway under s.86 of the Act,

[2] a true copy means a copy which is wholly and substantially the same as the original and where there are insignificant or minimal mistakes, the court may not take notice thereof,

[3] where the copy contains important omissions or discrepancies of a vital nature, which are likely to cause prejudice to the defence of the returned candidate, it cannot be said that there has been a substantial compliance of the provisions of s.81 [3] of the Act,

[4] prima facie, the statute uses the word "true copy" and the concept of substantial compliance cannot be extended too far to include serious or vital mistakes which shed the character of a true copy so that the copy furnished to the returned candidate cannot be said to be a true copy within the meaning of s.81 [3] of the Act, and [5] as s. 81 [3] is meant to protect and safeguard the sacrosanct electoral process so as not to disturb the verdict of the voters, there is no room for giving a liberal or broad interpretation to the provisions of the said section."

Since the corrupt practices are required to be proved to the hilt, the element of vagueness would immediately vitiate the election petition. A true copy supplied with mistakes of vital and serious nature would, therefore, entail dismissal of the election petition. Each case has to be considered on its own facts and circumstances. No general principle of universal application could possibly be laid. The learned counsel for the appellant contended that the affidavit is not an integral part of the election petition. Substantial compliance would be sufficient. We find no force in the contention. True that the defects could be rectified on being pointed out by the Registry of the High Court. As per Rules 8 and 9 of the High Court Rules, the Registrar is enjoined to point out the defects but the same was not done. It is contended that the respondent was in any way misled or prejudiced. The defect was a curable one. Opportunity should have been given to the appellant to have the defects corrected. In case the appellant had not carried out the correction, that part of the allegations which mentioned in the election petition alone is required to be struck off. The election petition cannot be dismissed under Section 86 of the Act since it is duly presented under Section 81. It would be done only at the trial, on proof of prejudice or the omission or prejudice caused to the respondent. In this case that step was not taken. In support thereof, the counsel cited catena of decisions of this Court, viz., *Manohar Joshi v. Nitim Bhaurao Patil & Anr.* [(1996) 1 SCC 169]; *Subhash Desai v. Sharda'd J. Rao & Ors.* [(1994)] Supp. 2 SCC 446]; *Ch. Subbarao v. Member, Election Tribunal, Hyderabad* [(1964) 6 SCC 213]; *Bhikaji Keshao Joshi & Anr. v. Brijlal Nandlal Biyani & Ors.* [(1955) 2SCR 428 at 429]; *Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore & Ors.* [(1964) 3 SCR 579] and *Sahodrabai Rajiv. Ram Singh Aharwar* [(1968) 3SCR 13]. We have carefully gone through all the cited decisions and given our anxious consideration to the respective contentions. In none of the cases the present question had arisen. In all the cases, though the affidavit or the election petition contained allegations of corrupt practices and true copies were served, the omissions in the copies were not of material facts which become an integral part of the election petition or of the pleadings. Therefore, this Court had not insisted upon strict standard of the scrutiny as required under Section 86.

In *Purushottam v. Returning Officer, Amravati & Ors.* [AIR 1992 Bombay 227], the present question had directly arisen. In that case the copy contained omission of vital nature, viz., the attestation by the prescribed authority. The High Court had held that the concept of substantial compliance cannot be extended to overlook serious or vital mistakes which shed the character of a true copy so that the copy furnished to the returned candidate cannot be said to be a true copy. We approve of the above view. Verification by a Notary or any other prescribed authority is a vital act which assures that the election petitioner had affirmed before the notary etc. that the statement containing imputation of corrupt practices was duly and solemnly verified to be correct statement to the best of his knowledge or information as specified in the election petition and the affidavit filed in support thereof; that reinforces the assertions. Thus affirmation before the prescribed authority in the affidavit and the supply of its true copy should also contain such affirmation so that the returned candidate would not be misled in his understanding that imputation of corrupt practices was solemnly affirmed or duly verified before the prescribed authority. For that purpose, Form 25 mandates verification before the prescribed authority. The object appears to be that the returned candidate is not misled that it was not duly verified. The concept of substantial compliance of filing the original with the election petition and the omission thereof in the copy supplied to the returned candidate as true copy cannot be said to be a curable irregularity. Allegations of corrupt practices are very serious imputations which, if proved, would entail civil consequences of declaring that he became disqualified for election to a maximum period of six years under Section 8A, apart from conviction under Section 136 [2]. Therefore, compliance of the statutory requirement is an integral part of the election petition and true copy supplied to the returned candidate should as a *sine qua non* contain the due verification and attestation by the prescribed authority and certified to be true copy by the election petitioner in his/her own signature. The principle of substantial compliance cannot be accepted in the fact situation.

The contention that the election petition cannot be dismissed under Section 86 at the threshold on account of the omission on the part of the Registry of the High Court to point out the same as per its procedure, cannot be countenanced. Lapse on the part of the Registry is not an insurance to deny to the returned candidate the plea that the attestation of the affidavit and its certification to be a true copy is an integral part of the pleadings in the election petition. Sections 81, 83[1](c) and 86 read with Rule 94-A of the Rules and Form 25 are to be read conjointly as an integral scheme. When so read, if the Court finds on an objection, being raised by the returned candidate, as to the maintainability of the election petition, the Court is required to go into the question and decide the preliminary objection. In case the Court does not uphold the same, the need to conduct trial would arise. If the Court upholds the preliminary objection, the election petition would result in dismissal at the threshold, as the Court is left with no option except to dismiss the same.

It is true that in Mrs. Shipra's case, i.e., C. A. No. 6359 of 1994, yet another contention was raised by her, viz., that rejection of her nomination was invalid in law. The High Court has held that even if more grounds were raised assailing the legality of the result of the election declared and if the mandatory requirement of Section 83 [1] (c) read with Rule 94-A was not complied with, the entire petition would have entailed dismissal. That view, we are of the firm opinion, is not correct in law. It is well settled that only those parts of the petition which contained allegations of corrupt practices and which are not pleaded in conformity with Form 25 read with Rule 94-A and Section 83 [1], alone are required to be struck off and other independent issues are required to be tried and decided on merits. In this case, though validity of the rejection of her

nomination was questioned by the appellant, it would appear that in the High Court it was not seriously canvassed and the main thrust of the argument in the High Court, by the counsel for the appellant, was on corrupt practices and curability of the defect which did not find favour with the High Court. In view of the above finding, we are of the considered view that the question of barring the appellant to contest elections on the ground of improper rejection or nomination, does not arise for serious consideration. The entire election petition rested only on imputation of corrupt practices. Consequently, when the election petition was held not maintainable due to the material defect in the true copy of the affidavit which is an integral part of the election petition, dismissal of the election petition cannot be faulted.

In other appeals, no other ground except the allegations of corrupt practices, was pleaded. Under these circumstances, we are of the considered view that the learned Judges have not committed any error of law warranting our interference.

The appeals are accordingly dismissed, but in the circumstances, without costs.

Sd/-

K. RAMASWAMY, Judge

Sd/-

S. P. BHARUCHA, Judge

Sd/-

K. S. PARIPOORNAN, Judge

New Delhi,

April 3, 1996

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6359 OF 1994

Dr. (Smt.) Shipra etc.

...

Appellant

Versus

Shri Shanti Lal Knoiwal

..

Respondent

WITH

CIVIL APPEAL NOS. 8080 OF 1994 & 6635 OF 1995

AND

CIVIL APPEAL NO. 200 OF 1993

Jhammak Lal

Appellant

Versus

Dr. Laxminarayan Pande & Ors.

Respondents

JUDGMENT

BHARUCHA, J.

I am in respectful agreement with the judgement and order of our learned brother, K. Ramaswamy, J. I would set out my reasons, briefly, thus :

The question that must be posed, as indicated by this Court's previous decisions, is : does the document purporting to be a true copy of the selection petition mislead in a material particular? The "true copy" of the election petition furnished by the appellant (election petitioner) to the respondent (the successful candidate) did not show that the appellant's affidavit supporting his allegations of corrupt practice had been duly sworn or affirmed. Where corrupt practice is alleged, the election petitioner must support the allegation by making an affidavit in the format prescribed. An affidavit must be sworn or affirmed

in the manner required by law, or it is not an affidavit. The document purporting to be a true copy of the election petition furnished by the appellant to the respondent gave the impression that the appellant's affidavit supporting his allegations of corrupt practice had not been sworn or affirmed and was, therefore, no affidavit at all; it misled in a material particular and its supply was, as the High Court held, fatal to the election petition.

Sd/-

New Delhi,
April 3, 1996

S. P. BHARUCHA, Judge

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6359 OF 1994

Dr. (Smt.) Shipra

...

Appellant

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...

Appellant

Versus

Laxminarayan Pande & Ors.

...

Respondents

JUDGMENT

PARIPOORNAN, J.

I respectfully agree with my learned Brethren that the appeals should be dismissed.

The relevant facts in the appeals are stated in the judgement of my learned Brother Ramaswamy, J. In view of the importance of the question, I would add the following :

Sections 81, 83 and 86 of the Representation of People Act (hereinafter referred to as 'the Act'), call for interpretation in this batch of appeals. The said statutory provisions may be usefully quoted

Section 81

"81. Presentation of petitions.—(1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of section 100 and section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than, the date of election of the returned candidate, or if there are more than one returned candidate at the election and the dates of their election or different, the later of those two dates.

Explanation.—In this sub-section, "elector" means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition, and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition."

(emphasis supplied)

Section 83.

"83. Contents of petition.—(1) An election petition—

- (a) shall contain a concise statement of the material facts on which the petitioner relies;
- (b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and
- (c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908, for the verification of pleadings :

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition."

(emphasis supplied)

Section-86 (1)

"86. Trial of election petition—(1) The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117."

There are innumerable decisions of this Court which have construed the above statutory provisions. It is hardly necessary to refer to all of them. One of the latest decisions is F. A. SAPA & ORS. V. SINGORA & ORS. (1991 (3) SCC 375). A mere look of the proviso to Section 83(1) along with Section 83 (2) will show that the affidavit referred to in the proviso to Section 83 (1) also forms part of the election petition. The election petition is in truth and reality one document, consisting of two parts—one being the election petition proper and the other being the affidavit referred to in the proviso to Section 83(1) of the Act. So, the copy of the election petition required to be filed under Section 81(3) read along with Section 83 will include a copy of the affidavit. See : M. Kamalam v. DR. V. A. SYED MOHAMMED, [AIR 1978 SC 840 (844)].

Qazi, J. in Purushottam v. Returning Officer, Amravati & Ors. (Air 1992 Bombay 227) has, after referring to the above decision of this court along with the other decisions and an unreported decision of the Bombay High Court in Election Petition No. 2 of 1990, held that the absence of the endorsement of the Notary on the copy of the affidavit accompanying the election petition renders the copy as not conforming to Section 81(3) of the Act, and the election petition is liable to be dismissed for the said omission

In my opinion, the above decision lays down the law correctly and is squarely applicable herein. In particular, the following observations in the unreported decision of the Bombay High Court in Election Petition No. 2 of 1990, quoted in paragraph No. 12 of the judgement of Qazi, J. are instructive and furnish sufficient basis to reach the said conclusion. The observations are to the following effect.

"50. That, however, leaves one question to be considered and it is whether the copy of the endorsement "Affirmed and signed before me" by the Notary, designation of the Notary and the stamped endorsement regarding the affirmation which he made at the time of the making of the affidavit, were necessary and essential parts of the document and if these are omitted from the copy furnished, that would render the copy, which is furnished, incomplete, and the defect would be so glaring as to negative the inference that the copy was furnished. When Form No. 25 prescribes a particular form and the copy of that affidavit is to be furnished, it seems to me that the endorsement of the authority before whom the affirmation was made, together with his official designation and the stamped endorsement, are also essential and without them the copy cannot be regarded as true copy. It is not merely the contents of the affidavit which brings sanctity to the document but the affirmation that has been made, and without the affirmation, it can be no affidavit at all. I am not impressed by the submission of Shri Bobbed that these endorsements were merely formal, because what is required under the proviso to sub-section (1) of S. 83 is an affidavit, and it should be possible for the respondent to ascertain whether, in fact, the contents were sworn, affirmed and signed before the Magistrate or the Notary or the person in whose presence the swearing of the affirmation was made, had authority to administer oath. The respondent will not be in a position to point out that the person who is said to have administered the oath, was not in existence or had no authority to administer the oath or that the signature and the endorse-

ment on the document purported to have been made by the alleged authority were fake. If the copies of the affidavit are not faithful and do not include these endorsements, a valuable right of the respondent is taken away and considering the purpose which the copy of the endorsement would serve, it cannot be said that this portion would not be integral part of the affidavit. Since these details form an integral part of the affidavit, furnishing a copy without that portion would not be furnishing a complete copy, and in that event, merely because the returned candidate made an endorsement that it was a true copy, it cannot be regarded as a true copy. Considering the purpose that is to be service, I do not think that the lapse can be regarded as inconsequential."

(emphasis supplied)

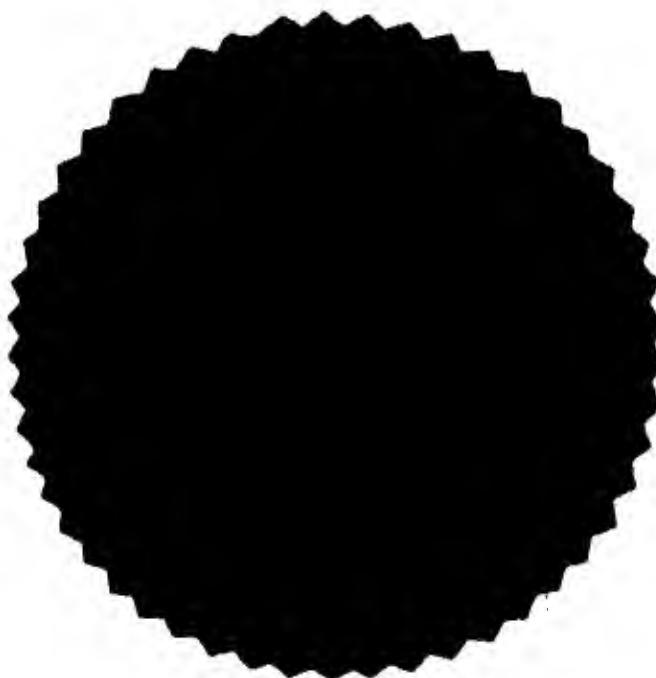
With respect, I would adopt the said observations as my own. The appeals deserve, to be dismissed.

Sd/-

K. S. PARIPOOPNAN, Judge.

New Delhi;

March 3, 1996.



SEALED IN MY PRESENCE

SECTION-XVII
SUPREME COURT OF INDIA

No. F. 3/Ed. B. J./65/96

New Delhi

Dated : 4-5-96

CORRIGENDUM

This Court's Judgment in
C. A. No. 6359 of 1994 etc.
Dr. (Smt.) Shipra etc. etc., v.
Shanti Lal Khoiwal etc. etc.
(Dated : 3-3-1996

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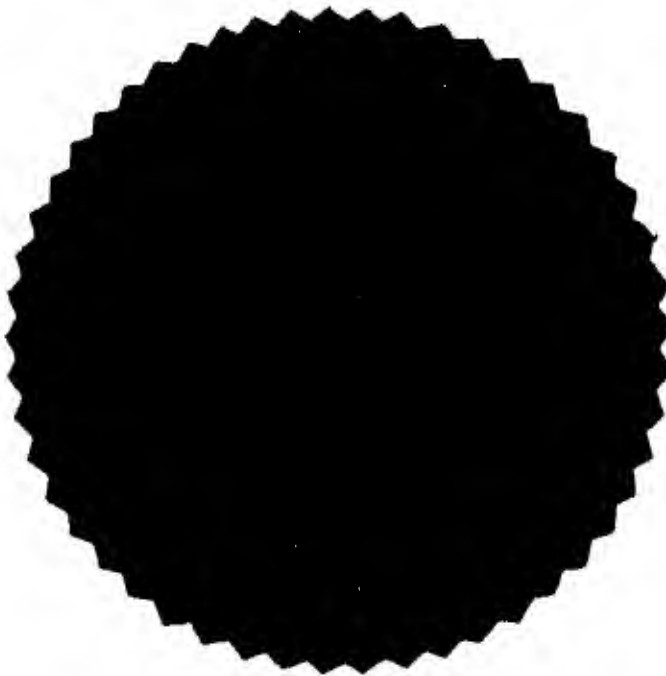
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March 3, 1996

April 3, 1996

Sd/-
SECTION OFFICER
EDITORIAL BRANCH



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